

HomeFund Restructuring Act 1993 No 112

[1993-112]



New South Wales

Status Information

Currency of version

Historical version for 4 July 2002 to 31 December 2013 (accessed 21 May 2024 at 5:07)

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
[Civil and Administrative Legislation \(Repeal and Amendment\) Act 2013 No 95](#) (not commenced — to commence on 1.1.2014)

Authorisation

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File last modified 20 November 2013

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Contents

Long title	4
Part 1 Preliminary	4
1 Name of Act	4
2 Commencement	4
3 Definitions	4
4 Objects	5
5 Notes	5
Part 2 Restructuring scheme	5
6 Restructuring scheme	5
7 Variation of the restructuring scheme	5
8 HomeFund borrowers' access to restructuring scheme	5
9 Administration of restructuring scheme	6
10-13 (Repealed)	6
14 Provision of financial counselling and legal assistance to HomeFund borrowers	6
Part 3 Consequences of restructuring scheme	6
15 Other relief	6
16 Application to existing entitlements and complaints	7
Part 4 Miscellaneous	8
17 Act binds Crown	8
18 Capitalisation of interest	8
19 Certain consents not required	8

20 Suspension of limitation period	9
21 Report.....	9
22 Regulations.....	9
23 (Repealed)	9
24 Savings and transitional provisions	9
25 Review of Act.....	9
Schedule 1 Restructuring scheme.....	10
Schedule 2 Complaints that may be the subject of a determination under the HomeFund Commissioner Act 1993	11
Schedule 3 (Repealed)	12
Schedule 4 Savings and transitional provisions	12

HomeFund Restructuring Act 1993 No 112



New South Wales

An Act with respect to a restructuring scheme for HomeFund borrowers; and for other purposes.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *HomeFund Restructuring Act 1993*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

(1) In this Act:

determination means a determination under Part 5 of the *HomeFund Commissioner Act 1993*.

exercise of a function includes, if the function is a duty, the performance of the duty.

FANMAC means First Australian National Mortgage Acceptance Corporation Limited.

FANMAC trustee means the trustee of funds raised from time to time by FANMAC for the purposes of home lending.

function includes a power, authority or duty.

Home Purchase Assistance Authority means the body of that name constituted under the *Home Purchase Assistance Authority Act 1993* (as in force before its repeal).

HomeFund borrower means the mortgagor under a HomeFund mortgage or the guarantor under an associated contract of guarantee, but does not include a person who has ceased to be such a mortgagor or guarantor.

HomeFund Commissioner means the HomeFund Commissioner appointed under the *HomeFund Commissioner Act 1993*.

HomeFund mortgage means a mortgage executed by Permanent Trustee Company Limited as mortgagee in its capacity as FANMAC trustee, and includes:

- (a) the credit contract secured by such a mortgage, and
- (b) any contract of guarantee or other contract associated with such a mortgage or credit contract.

mortgage has the same meaning as in the [Conveyancing Act 1919](#).

New South Wales Land and Housing Corporation means the New South Wales Land and Housing Corporation constituted under the [Housing Act 2001](#).

restructuring scheme means the scheme referred to in section 6 and Schedule 1.

- (2) This Act does not apply to a HomeFund mortgage described as a State Partnership Loan, a Rent-buy Loan or an Aged-persons Update Loan.

4 Objects

The objects of this Act are to enable HomeFund borrowers to participate in a restructuring scheme and to provide for the consequences of the restructuring scheme.

5 Notes

Matter appearing under the heading “Note” in this Act does not form part of this Act.

Part 2 Restructuring scheme

6 Restructuring scheme

- (1) The restructuring scheme is a scheme established by the Home Purchase Assistance Authority, with the consent of the Minister, as generally contemplated by the report of the Authority to the Minister for Housing dated 6 December 1993. The scheme established by the Authority is to comply with the principal features of the scheme set out in Schedule 1.
- (2) The restructuring scheme (including any extension of the scheme) is, for the purposes of section 66 (3) (c) of the [Housing Act 2001](#), a program for the restructuring of a HomeFund scheme.

7 Variation of the restructuring scheme

The scheme may be varied by the New South Wales Land and Housing Corporation, with the consent of the Minister, but not so as to depart from the principal features of the scheme.

8 HomeFund borrowers' access to restructuring scheme

- (1) A HomeFund borrower is eligible to participate in the restructuring scheme in

accordance with the conditions of the scheme.

- (2) A HomeFund borrower is eligible to participate in the restructuring scheme even though the borrower has made a complaint under the *HomeFund Commissioner Act 1993* or a complaint made by the borrower under that Act is the subject of a determination by the HomeFund Commissioner.

9 Administration of restructuring scheme

- (1) The New South Wales Land and Housing Corporation is to manage the restructuring scheme.
- (2) For the purposes of managing the restructuring scheme, the New South Wales Land and Housing Corporation may exercise its functions under the *Housing Act 2001*, including its functions under section 9 (2) of that Act, as if the restructuring scheme were a scheme managed under that Act.

10-13 (Repealed)

14 Provision of financial counselling and legal assistance to HomeFund borrowers

It is the duty of the Minister to ensure that HomeFund borrowers who are eligible to participate in the restructuring scheme, but who are not yet participating in that scheme, are given access to impartial financial counselling and legal assistance services.

Part 3 Consequences of restructuring scheme

15 Other relief

- (1) **Claims against the Crown and others extinguished** The Crown, FANMAC, the FANMAC trustee and a co-operative housing society, including any persons acting on their behalf, are not subject to any action, liability, claim or demand (and a determination may not be made) in respect of:
 - (a) any HomeFund mortgage, or
 - (b) any transaction relating to, preliminary to or arising from any HomeFund mortgage, or
 - (c) the promotion, origination or management of any HomeFund mortgage or related HomeFund scheme.
- (2) **Restricted determinations may be made** The HomeFund Commissioner may however make a determination under the *HomeFund Commissioner Act 1993* about a complaint or part of a complaint by a HomeFund borrower who is eligible to participate in the restructuring scheme, or a HomeFund borrower who has refinanced a HomeFund mortgage, but (except as provided by this section) may do so only if the determination relates to a complaint or part of a complaint listed in Schedule 2 or specified in the

regulations.

- (3) **Limit on type of relief** The Commissioner may not, in making such a determination, make a determination referred to in section 25 (3) (a), (b) or (c) of the *HomeFund Commissioner Act 1993*, which relate to altering mortgages and entering into new mortgages.
- (4) **Statutory remedies** Subsection (1) extends to, but is not limited to, claims under the *Contracts Review Act 1980*, the *Consumer, Trader and Tenancy Tribunal Act 2001* or the *Fair Trading Act 1987*.
- (5) **Rights of protected borrowers (other than rights to determinations)** This section does not affect the rights (other than the right to have a determination made) of a person:
 - (a) who is categorised as Category C or D, as set out in Schedule 1, unless and until the person receives assistance of a kind set out in Category B or C, or
 - (b) who has ceased to be a HomeFund borrower (otherwise than by means of refinancing) and has not been granted assistance under the restructuring scheme.
- (6) **Rights of protected borrowers to determinations** This section does not affect the rights to have a determination made under the *HomeFund Commissioner Act 1993* of a person who is categorised as Category B, C or D as set out in Schedule 1, unless and until the person receives assistance of a kind set out in Category B.
- (7) **Rights of protected borrowers who have left the HomeFund scheme to determinations** This section does not affect the rights to have a determination made under the *HomeFund Commissioner Act 1993* of a person who has ceased to be a HomeFund borrower (otherwise than by means of refinancing) and has not been granted assistance under the restructuring scheme.
- (8) **Payment of money payable under a determination** The HomeFund Commissioner may, in making a determination that an amount of money is payable to a person who is categorised as Category B, as set out in Schedule 1, require that the money is paid in reduction of the debt under the HomeFund mortgage.
- (9) **Other relief to be taken into account** Any determination made by the HomeFund Commissioner in favour of a HomeFund borrower must have due regard to any assistance that has been granted to the person, or to which the person is entitled or for which the person is eligible, under the restructuring scheme.

16 Application to existing entitlements and complaints

- (1) Section 15 (1) applies only to entitlements in existence at the commencement of section 15. Section 15 (1) and (2) apply to complaints made before or after the commencement of section 15.

(2) However, that section does not affect:

- (a) proceedings commenced in any court or tribunal (except against the Crown or persons referred to in section 15 (1)) before that commencement or any decision of a court or tribunal made before that commencement, or
- (b) a determination made under the *HomeFund Commissioner Act 1993* before that commencement, or
- (c) any power to make a determination under section 27 (which relates to stays of eviction) of the *HomeFund Commissioner Act 1993*.

Note—

The remaining jurisdiction of the Commissioner, as a result of sections 15 and 16, is to make:

- (a) monetary determinations about complaints relating to administrative matters listed in Schedule 2 or the regulations in relation to HomeFund borrowers who refinance or receive assistance in the restructuring scheme under Category A or B, and
- (b) determinations about complaints relating to any matters by all other former HomeFund borrowers who left otherwise than by means of refinancing and other borrowers categorised as Category B, C or D who do not receive assistance as referred to in Category B, and
- (c) determinations about stays of eviction concerning HomeFund borrowers.

Part 4 Miscellaneous

17 Act binds Crown

This Act binds the Crown.

18 Capitalisation of interest

- (1) For the avoidance of doubt, it is declared that the provisions of registered Memoranda numbers Y 901844, Y 901845, Y 901846, Y 901847, Y 901848, Z 274110, Z 274111, Z 274112, Z 274113 and Z 274114 relating to capitalisation of interest permit, and have always permitted, the capitalisation of the interest accrued for the month to which a monthly instalment relates less any money actually received by the mortgagee on account of interest so accrued.
- (2) The regulations may extend the operation of this section to a specified document constituting or forming part of, or previously constituting or forming part of, a HomeFund mortgage.

19 Certain consents not required

The FANMAC trustee is not required to obtain the consent of the beneficiaries of any trust of which it is trustee, or any FANMAC bond holders or unit holders, to the doing of any act, matter or thing in connection with the restructuring scheme. The FANMAC trustee is not subject to any action, liability, claim or demand for a failure to consult with or obtain the

consent of any such beneficiaries, bond holders or unit holders in relation to the doing of any such act, matter or thing.

20 Suspension of limitation period

- (1) This section applies to any limitation period provided for by:
 - (a) the *Limitation Act 1969*, or
 - (b) the *Contracts Review Act 1980*, or
 - (c) the *Fair Trading Act 1987*, or
 - (d) the *Consumer, Trader and Tenancy Tribunal Act 2001*.
- (2) The following periods are to be disregarded when determining the last day of any limitation period to which this section applies:
 - (a) in the case of proceedings arising out of a HomeFund mortgage in respect of which a determination is made by the HomeFund Commissioner, the period between 10 May 1993 and the date occurring 2 years after the determination is made,
 - (b) in the case of any other proceedings arising out of a HomeFund mortgage, the period between 10 May 1993 and 31 March 1996.

21 Report

The New South Wales Land and Housing Corporation must, in its annual report, report on the operation and effectiveness of the restructuring scheme, including, but not limited to, the number of people affected by the scheme and the kinds of assistance offered and received.

22 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

23 (Repealed)

24 Savings and transitional provisions

Schedule 4 has effect.

25 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Restructuring scheme

(Section 6)

1 The restructuring scheme will apply to borrowers on the basis of the principal features set out in this Schedule, subject to any variation under section 7 (2). Borrowers will be categorised by the Home Purchase Assistance Authority on the basis of an allocated category. The categorisation will be notified in writing.

2 The broad categories of borrowers and assistance are as follows:

(a) **Category A**

Borrowers who are able to refinance with commercial lenders as at 7 December 1993 or such later date as may be prescribed by the regulations. These borrowers will be informed that they may refinance or remain in the existing unstructured scheme. Those who refinance may be eligible for the exemption from stamp duty for home loan refinancing while it continues in force.

(b) **Category B**

Borrowers who are unable to refinance with commercial lenders but who are determined by the Home Purchase Assistance Authority to be able to pay a restructured income-geared mortgage as at 7 December 1993 or such later date as may be prescribed by the regulations. These borrowers will be offered such a mortgage and they will be informed that they may instead remain in the existing unstructured scheme.

(c) **Category C**

Borrowers who are unable to pay a restructured income-geared mortgage and are not 3 months or more in arrears as at 7 December 1993 or such later date as may be prescribed by the regulations. These borrowers will be able to sell the property to the Authority or a body nominated by the Authority, and any part of the debt that is more than the value of the property will be waived. Any sale is to be for the market value of the property, as determined after an independent valuation is obtained. These borrowers will be offered the right to rent the property for a period of up to 5 years on conditions determined by the Authority. These borrowers will be informed that they may instead remain in the existing unstructured scheme. At the end of the 5 year rental period these borrowers will be provided with public housing accommodation, subject to eligibility for such accommodation, or the rental period will be extended until such accommodation is available.

(d) **Category D**

Borrowers who are 3 months or more in arrears as at 7 December 1993 or such later date as may be prescribed by the regulations. Borrowers who pay the arrears within 3 months will be

offered assistance as set out in Category C or may instead be offered assistance as set out in Category B, as determined by the Authority. Borrowers who make satisfactory arrangements within 3 months to pay the arrears will be offered assistance as set out in Category C or may instead be offered assistance as set out in Category B, as determined by the Authority. If the arrears are not paid, or no satisfactory arrangement is made, within 3 months, the borrowers may be offered the right to occupy the premises for up to 15 months on conditions determined by the Authority. Arrangements under this category may include arrangements to capitalise arrears.

- 3 The scheme may provide for allowance to be made, as determined by the Authority, in respect of borrowers who have, before the date of the written notice referred to in clause 1, received the benefit of a determination under the *HomeFund Commissioner Act 1993*.
- 4 The scheme may provide for the situation where the borrower under a HomeFund mortgage changes or dies, or, where there are 2 or more borrowers, any one or more of them, change or die, or circumstances otherwise change.
- 5 The scheme may specify the circumstances in which 2 or more of the borrowers under a HomeFund mortgage must act together.
- 6 The scheme may limit the period in which assistance under the scheme must be taken up, but in any case the period must not end before 30 June 1994.
- 7 The scheme may make it a condition of participation in the scheme that a HomeFund borrower executes a deed of release relating to specified matters.

Schedule 2 Complaints that may be the subject of a determination under the *HomeFund Commissioner Act 1993*

(Section 15)

- (1) Any complaint (or part of a complaint) alleging incorrect accounting with respect to payments made by a HomeFund borrower under a HomeFund mortgage.
- (2) Any complaint (or part of a complaint) alleging mistakes with respect to arrangements for the direct debiting of a HomeFund borrower's bank account in connection with payments under a HomeFund mortgage.
- (3) Any complaint (or part of a complaint) alleging that mortgage assistance payable to a HomeFund borrower has not been paid into the borrower's home loan account.
- (4) Any complaint (or part of a complaint) alleging that action has been improperly taken against a HomeFund borrower under a penalty clause in a HomeFund mortgage.
- (5) Any complaint (or part of a complaint) alleging undue delay in the preparation of documents to enable a HomeFund borrower to discharge a HomeFund mortgage.
- (6) Any complaint (or part of a complaint) alleging that a HomeFund borrower has not been advised of his or her eligibility for mortgage assistance or other relevant relief.
- (7) Any complaint (or part of a complaint) alleging that a HomeFund borrower has been improperly

refused mortgage assistance or other relevant relief for which he or she has been eligible.

- (8) Any complaint (or part of a complaint) alleging that a HomeFund borrower has been improperly required to repay mortgage assistance or other relevant relief.
- (9) Any complaint (or part of a complaint) alleging that a HomeFund borrower's application for a reduction in the periodic payments due under a HomeFund mortgage has been improperly refused or that the granting of such a reduction has been improperly withdrawn.
- (10) Any complaint (or part of a complaint) alleging that improper threats have been made against a HomeFund borrower as to the taking of legal action with respect to a HomeFund mortgage.
- (11) Any complaint (or part of a complaint) alleging that legal action has been improperly taken against a HomeFund borrower with respect to a HomeFund mortgage.
- (12) Any complaint (or part of a complaint) alleging that a HomeFund borrower has been given false or misleading information as to the amount of any arrears due under a HomeFund mortgage.
- (13) Any complaint (or part of a complaint) alleging that action to evict a HomeFund borrower from property the subject of a HomeFund mortgage has been improperly taken.
- (14) Any complaint (or part of a complaint) alleging that action to exercise a power of sale over property the subject of a HomeFund mortgage has been improperly taken.
- (15) Any complaint (or part of a complaint) alleging that a HomeFund borrower has been improperly refused approval to enter into an arrangement to pay arrears due under a HomeFund mortgage.
- (16) Any complaint (or part of a complaint) alleging that there has been an administrative error with respect to the information given to a HomeFund borrower as to the payments due under a HomeFund mortgage.
- (17) Any complaint (or part of a complaint) alleging that there has been an administrative error in the assessment of the suitability to a HomeFund borrower of a particular class of HomeFund mortgage.

Schedule 3 (Repealed)

Schedule 4 Savings and transitional provisions

(Section 24)

1 Definitions

In this Schedule:

relevant commencement, in relation to a provision of some other Act that is amended by a provision of this Act, means the day appointed under section 2 of this Act for the commencement of the amending provision.

2 Pending complaints under the [HomeFund Commissioner Act 1993](#)

- (1) A provision of the [HomeFund Commissioner Act 1993](#), as amended by this Act, applies

to complaints made before the relevant commencement as well as to complaints made on or after the relevant commencement.

- (2) However, a complainant whose complaint was made before the relevant commencement may withdraw the complaint, whether or not the Commissioner agrees.

3 Existing determinations under the [HomeFund Commissioner Act 1993](#)

- (1) An amendment made by this Act to a provision of the [HomeFund Commissioner Act 1993](#) does not apply in relation to any determination made under that Act before the relevant commencement.
- (2) In particular, section 40 of the [HomeFund Commissioner Act 1993](#), as amended by this Act, does not confer a right of appeal with respect to a determination made under that Act before the relevant commencement.

4 (Repealed)